
AUDIT OF FIESTA MARKET SQUARE, INC. LICENSE AGREEMENT

APRIL 1999 THROUGH APRIL 2003

City Staff Responses Received January 22, 2004

For The Audit Report Dated November 6, 2003

**AUDIT OF FIESTA MARKET SQUARE, INC. LICENSE AGREEMENT
APRIL 1999 THROUGH APRIL 2003
City Responses to the Audit Report Dated November 6, 2003**

Excerpts from Fiesta Market Square, Inc. License Agreement audit report dated November 6, 2003 (City Issues: pages 12 – 18) and the City's responses received January 22, 2004

City of San Antonio Issues – Internal Review Department

ISSUE: The license agreement, Section 16, required that the City's Office of Internal Review evaluate the FMSI accounting system. It would have been reasonable to expect this review to occur in 1999 or 2000.

FINDING: No documentation was located to indicate that the City performed this requirement during the five-year term.

Correspondence was obtained from Parks staff regarding Internal Review's assistance with municipal integrity issues in 2000 and 2001. This material addresses some of the internal control concerns raised in this audit; therefore, it has been incorporated for reference purposes as **Appendix D.5**.

City of San Antonio Issues – Parks And Recreation Department

ISSUE: Parks and Recreation Department management and Market Square staff had primary responsibility for detecting significant internal and management control problems for this agreement. The personnel resources assigned to this task were as follows:

Parks had a liaison, known as the Special Activities Coordinator (SAC), assigned to Market Square. The job description is included in **Appendix Q.1**. The essential job functions included coordinating the Fiesta at Market Square and other year round events; and planning activities that would utilize the City facilities. The same individual filled this position for many years prior to the license period; and he continued in this capacity after the term ended.

This City employee appeared to have worked with FMSI and on the "Fiesta del Mercado" on almost a fulltime basis during the five-year agreement. In the early years, this City employee attended the FMSI meetings and prepared the official minutes. FMSI Board meeting minutes, correspondence and other documentation obtained from FMSI, City Staff, and other sources are replete with references to this individual's assistance in conducting FMSI activities.

Correspondence in January and March 2000, **Appendices Q.3 and Q.4**, from the FMSI President provided specific insight into the depth of this person's involvement. It also presented

AUDIT OF FIESTA MARKET SQUARE, INC. LICENSE AGREEMENT
APRIL 1999 THROUGH APRIL 2003
City Responses to the Audit Report Dated November 6, 2003

the FMSI President's perception about the actions of the City employee involved, the SAC. The President indicated that the individual was not always acting in his capacity as a City employee.

This City employee had firsthand knowledge, ample opportunity, and a public duty as one of the official representatives of the Parks Department to advise City Management of license agreement defaults and other noncompliance acts that occurred during the five years. There was no formal documentation that the Special Activities Coordinator (SAC) reported or followed-up on such conditions.

Information reviewed for the performance audit demonstrated recurring instances of potential conflicts of interest for the SAC in relation to the FMSI organization and the "Fiesta del Mercado." In the minutes of May 3, 2001 – **Appendix Q.5**, the FMSI Board considered and included in a motion to pay this City worker \$2,000 for his work on corporate sponsorships. These minutes also indicated that the individual would need to ask permission from the City if he could accept the donation.

It appeared that this City worker was involved with FMSI in obtaining a trademark for "Fiesta del Mercado." **Exhibit XIII.2** reflected the employee's name as a contact person on official government correspondence. He also signed several documents and contracts for FMSI; **Appendix H.1** includes a booth contract dated May 12, 2001 with his signature. FMSI minutes, **Appendices G.13 and G.53**, documented that he asked the organization for advertising and entertainment funds. No City procedural requirements could be identified for making such requests.

FMSI minutes, **Appendix Q.20.a**, also reflected that the organization asked the City employee for funds from weekend events. A follow-up letter was sent to the City Parks Department by FMSI's President asking about weekend event proceeds, **Appendix Q.20**. The implication was that FMSI was entitled to all net proceeds from City sponsored events in the Market area. Shortly after this inquiry, a deposit was made. Available documentation indicates that this timing did not coincide with "Fiesta del Mercado."

Documentation presented for the five-year period did not demonstrate an objective or "arm's length," relationship between this City worker and the FMSI Board, or the three associations that it represented. This lack of objectivity contributed to the on-going default and non-compliance actions by the licensee.

AUDIT OF FIESTA MARKET SQUARE, INC. LICENSE AGREEMENT
APRIL 1999 THROUGH APRIL 2003
City Responses to the Audit Report Dated November 6, 2003

In March 2001, the City hired a Facilities Operations Coordinator (FOC) for Market Square. The full job description is part of **Appendix Q.2**. The essential job functions included managing short-term license agreements for events; supervision of maintenance and administrative personnel - hiring, training, scheduling, and evaluations; and budgetary responsibilities.

The individual employed had experience with FMSI and "Fiesta del Mercado" through prior employment with the YMCA. Records submitted, including Board minutes during the five years often referenced the individual. The records from February 17, 2000, **Appendix G.6**, noted that this individual wanted to participate in entertainment and margarita concession management prior to her employment with the City.

This City employee had specific knowledge, ample opportunity, and a public duty as a principal representative of the Parks Department to advise immediate management of license agreement defaults that occurred from April 24, 2001 until the license agreement ended in April 2003. There were notes of discussions about various concerns and issues with FMSI activities, with City Supervisors, and in some cases City Council Members. There was some documentation that the FOC acted to inform the Board about some issues and conditions that existed during the two-year period. These conversations and the correspondence appeared to result in compliance and/or correction of a few issues, which were not the major control related items.

The individual was not deemed objective in her role with the Market Square due to written documentation reviewed for periods prior to and after her employment. Invoices paid by FMSI in 2002, **Appendix Q.29**, showed this City employee as a contact person for the YMCA. The YMCA had an informal relationship with FMSI to operate the margarita and/or soda booths; **Exhibit XIX.3** is a draft contract regarding this arrangement between them.

Appendix Q.7 is a photocopied 2002 short-term rental contract that the FOC had FMSI execute for the "Fiesta del Mercado." This document illustrated that had the employee sufficiently understood the forms and procedures, it would have been apparent that the rental contract was inappropriate. May 15, 2003 correspondence in the form of email, **Appendix Q.24**, between the FOC and the Parks Contract Administrator provided some insight about the monitoring of the license agreement between 2001 and the termination in May 2003. This information fell short of addressing the substantial internal and management control problems.

**AUDIT OF FIESTA MARKET SQUARE, INC. LICENSE AGREEMENT
APRIL 1999 THROUGH APRIL 2003
City Responses to the Audit Report Dated November 6, 2003**

The Parks and Recreation Department provided a large binder of information regarding the license agreement. It contained FMSI Board minutes; information on booth planning for the five-year period; email and other correspondence between the City, FMSI, and City Council Members; association articles of incorporation; City staff job descriptions; insurance certificate information; and YMCA proposals for "Fiesta del Mercado." This material was extremely useful for the audit.

Parks management did not provide operating and/or monitoring guidelines or results of on going monitoring of this license agreement. There were no written notices of default or noncompliance given to FMSI during the five-year period. There were some notes of issues about default conditions or noncompliance, but nothing to indicate action initiated by Parks management to require compliance by FMSI. Among the informal notes was direction given by the Contract Administrator for Parks to another City employee to prepare a letter to FMSI regarding the issues raised by its CPA in the letter to management dated September 19, 2000, refer to **Exhibit III.2**. However, no documents following up on this were located.

There were limited documents addressing the role of City staff, especially the SAC, in relation to FMSI. This material explained and pointed out situations where the City staff appeared to collaborate with the FMSI Board and the association efforts to enhance their business interests. Generally, the services rendered were much broader than the job descriptions implied.

FINDINGS: Parks and Recreation Department's internal and management controls for Market Square operational functions involving FMSI and "Fiesta del Mercado," and for departmental monitoring of the license agreement were inadequate. This was generally the case for the entire five-year period based upon the documentation available for review. The purpose of the new agreement was to significantly improve controls for the Fiesta event because history, and audit information, **Appendix D**, identified prior internal and management control inadequacies.

City staff attributed the state of the control environment to various causes including:

- Perceptions about City Council directives or feedback for handling FMSI and/or LULAC. These perceptions were especially strong during the first year due to extensive publicity related to the agreement.

AUDIT OF FIESTA MARKET SQUARE, INC. LICENSE AGREEMENT
APRIL 1999 THROUGH APRIL 2003
City Responses to the Audit Report Dated November 6, 2003

- Limited manpower to handle the operating and monitoring requirements of the entire Parks Department functions during this five-year period.
- Reliance on the Office of Internal Review to perform or assist with contract audits or control reviews.

Management of the Parks and Recreation Department failed to ensure that the staff had the appropriate job skills, policies and procedures, training, and supervision. This failure to develop and implement fundamental internal and management controls for the Market Square area gave FMSI and City employees opportunities over the five-year period to abuse and mishandle City resources. Monetary losses resulting from any theft, abuse, and/or misuse could not be determined based upon the available records and information.

As a result of such control deficiencies, City employees assigned to Market Square during the five-year term appeared to disregard the business practices used by FMSI to select booth operators and entertainment/promoters. FMSI was allowed to operate more booths than its agreement authorized for the license fee paid to the City, which may have caused an undetermined amount of incremental expense to the City, especially for police resources. City Parks staff allowed FMSI operations during the five years to operate in ways that were unfair and not equitable to the community in general as required by the license agreement.

The handling of this major license agreement demonstrated competency limitations in the operating and monitoring functions. The magnitude of issues, especially the lack of appropriate procedures and of fundamental staff supervision, indicated a high probability that similar control deficiencies have occurred with the short-term rental arrangements. Parks staff and management through their in-action permitted substantial breaches of this license agreement. City staff failed to provide written notice of default to FMSI for a variety of occurrences over the license term. Such notice would have required the termination process to begin had FMSI not complied during the allowed time. Had City staff acted in a timely manner, the inadequate business practices used by FMSI and acts of noncompliance may have been addressed between April 1999 and 2003. Through the default and related termination procedures, it may also have been possible to enforce the license agreement requirements applicable to LULAC, which would have resulted in greater proceeds.

AUDIT OF FIESTA MARKET SQUARE, INC. LICENSE AGREEMENT
APRIL 1999 THROUGH APRIL 2003
City Responses to the Audit Report Dated November 6, 2003

RECOMMENDATIONS:

City Council and City Management should re-evaluate the policy issues and costs associated with enhancing the business opportunities for such a narrowly focused group. For an extended period of time, substantial City manpower and resources have been directed to assist the one hundred or so Market Square area owners/tenants. From documentation reviewed, it appeared that in its earlier years this was deemed necessary to develop the area's tourist traffic and small businesses. However, it appears that these policies regarding the Market Square area have not been looked at for many years. The status quo continued which has now created new issues and problems to address, such as potential monopolization of City business opportunities by individuals, small groups, or organizations.

The City's Management Team should continue to address their organization and alignment changes to deal with the impact that the 2001 City Charter revisions had on the utilization and reliance on the internal review function for control monitoring and assessment. Contracts and agreements should no longer specify routine operational responsibilities for internal audit in their administration. Where this language currently exists, the departments should ensure that department monitoring functions are enhanced to cover these requirements until the contract terminates or can be revised.

It is further recommended that City Management consider the control benefits, uniformity of process, and cost savings that could result from consolidating all City contract-monitoring functions into a single organization. This solution would provide an opportunity for greater segregation of controls, for enhancement of the City staff skills related to control environments, and for overall improvement in the City's contract monitoring functions. A significant advantage of such a change would be improved detection and warning whenever City staff or vendors demonstrate noncompliance with license/contract terms.

It is evident from the audit work performed that while changing the Fiesta event operator is required; it would only be a partial solution. Substantial control thought process enhancements within the Parks Department are needed. City Management should strongly consider taking appropriate administrative actions to deal with the Market Square personnel and other Parks Department staff involved in the mishandling of this contract over the five-year period. Immediate reassignment of some individuals to other positions is recommended due to objectivity and performance impairments identified during the audit of this license agreement.

AUDIT OF FIESTA MARKET SQUARE, INC. LICENSE AGREEMENT
APRIL 1999 THROUGH APRIL 2003
City Responses to the Audit Report Dated November 6, 2003

The City still needs to address the maintenance, security and promotional needs for Market Square. The Convention and Visitors Bureau (CVB) could potentially provide more cost effective marketing benefits to the City and its Market Square tenants. There appeared to be significant redundancy between the City staff positions and the large amounts paid by FMSI to firms and individuals for similar services. Handling tenant leases and related issues could potentially be consolidated with Asset Management's property and contract functions. Facility issues could be consolidated with similar Public Works functions in the vicinity of Cattlemen's Square. By doing so, the Special Activities Coordinator position in Market Square and the Facilities Operations Coordinator positions could potentially be eliminated.

For the future, the City should evaluate its options for operating Market Square facilities and events. This could include outsourcing all property management functions and responsibilities for special events such as "Fiesta del Mercado." As an alternative, the City could elect to continue in-house property management, and only outsource the special events, or night, weekend and holiday celebrations in the plaza areas. The City could consolidate the Market Square with La Villita, Hemisfair, Sunken Gardens, and similar venues for purposes of event and property management. Whether outsourcing of any type occurs in the future, there must still be major improvements in the City's oversight, or monitoring, of such activities. Outsourcing is not a cure for the general absence of internal and management controls.

AUDIT OF FIESTA MARKET SQUARE, INC. LICENSE AGREEMENT
APRIL 1999 THROUGH APRIL 2003
City Responses to the Audit Report Dated November 6, 2003

PARKS AND RECREATION DEPARTMENT RESPONSES:

BACKGROUND:

MARKET SQUARE FIESTA EVENT

Since 1894, the City of San Antonio has owned and operated the public Market Square, between historic Plaza de Armas and Cattleman's Square near downtown. During that time, the City has contracted with tenants to sell produce, wares, arts and crafts, food and drink, and curios, and has offered hundreds of special events on the property over the years, many during the annual Fiesta celebration. In the mid 1980's, renovation of the Farmer's Market through an Economic Development Administration grant resulted in a three tiered business incubator operation assisted by the City that is basically the same tenant structure today. For the past several years, the City has been involved with the private sector in operating a Fiesta event in Market Square.

- In 1983, the City entered into an agreement with two tenant associations, the Market Square Association and the El Mercado Merchants Association, for Fiesta activities at Market Square. The tenant associations approached the City about entering into this contractual relationship in an effort to secure funding for capital improvements at Market Square.
- In 1987, 1988, 1989, and 1993, the Farmer's Market Tenants Association also entered into contractual agreements with the City to stage a Fiesta event in the Farmer's Market, expanding into Gateway Plaza (area under Interstate 35) in 1993.
- In 1994, the three tenant associations at Market Square formed "Los Tres Mercados" and entered into an agreement with the City to host Fiesta del Mercado through 1998.
- In 1999, a five-year license agreement was entered into with Fiestas Market Square, Inc. (FMSI), a non-profit corporation made up of three members from each of the three tenant associations: Market Square Association, El Mercado Merchants Association, and the Farmer's Market Tenants Association. This group's formation was at the request of the City to consolidate efforts of the three associations into one non-profit entity. That license agreement expired at the end of the 2003 Fiesta event.

The Market Square Fiesta event has been annually held on public property, which contains entertainment stages, food and beverage booths and gives Market Square tenant businesses an opportunity to benefit from large crowds during Fiesta. The City's contract with non-profits in the past also benefited the City through the provision of an organized activity at Market Square, allowed for funds raised by the non-profits to go back into promoting and providing security enhancement at Market Square, and paid event revenue

AUDIT OF FIESTA MARKET SQUARE, INC. LICENSE AGREEMENT
APRIL 1999 THROUGH APRIL 2003
City Responses to the Audit Report Dated November 6, 2003

to the City for capital improvements in Market Square. The City has budgeted event security costs by the Police Department on an annual basis, which has not been reimbursed by the event contractor or by revenue to the City.

CITY INVOLVEMENT IN SPECIAL EVENTS

The City of San Antonio has been involved with events in conjunction with non-profit organizations over the years in several ways.

City Co-Sponsored Events

The City often acts as a co-sponsor for major citywide events such as Celebrate San Antonio on New Year's Eve, the July 4th Celebration at Woodlawn Lake, JazzSAlive at Travis Park, Martin Luther King March, Hispanic State Fair at Rosedale Park, Caesar Chavez March, occasional one time events such as Spurs Championship parades, dedications, etc. These types of events are often supported by the City in regard to administrative assistance, set up and take down, inspections, barricading, clean up, etc. Generally, no license agreements or contracts are associated with these types of events. The organizations involved are usually responsible for fundraising/sponsorships, promotions, entertainment, vendors and cash management (if a cash event) on behalf of or of assistance to the City.

License Agreement Events

The use of license agreements are for specific purpose events not necessarily considered citywide in scope. These events include NIOSA, Market Square Fiesta event, Botanical Society events, Paseo del Rio events, etc. These license agreements are for multiple years and allow for fundraising by non-profits on City property with a benefit to the public and City facilities (non-profits provide direct and indirect return to the facility associated with the event such as La Villita, Botanical Garden, Market Square and the River Walk).

Other Special Events

City facilities are rented by organizations, businesses, and individuals on an irregular basis (not necessarily annual or repetitive) for entertainment, fundraising, ceremonies, etc. The City collects facility use fees for these events, at the rate established by City Council ordinance during each annual budget adoption. Several facilities, such as the Sunken Garden Theater, Brackenridge Park pavilions, Arneson River Theater, La Villita, Market Square Plazas, golf courses, sports complexes, and others are heavily rented during the year for uses such as concerts, special events, convention socials, receptions, and tournaments, many which are fundraisers for organizations. The City provides facility operation and maintenance and often times provides customer service/event assistance, i.e. golf and sports tournaments.

The Fiesta Commission has the most tenured and close relationship with the City through a contract that involves that organization's role as the authorized organizer for citywide events during Fiesta. In that contract, the City has standing in decisions

AUDIT OF FIESTA MARKET SQUARE, INC. LICENSE AGREEMENT
APRIL 1999 THROUGH APRIL 2003
City Responses to the Audit Report Dated November 6, 2003

involving the carnival that is set up in the City Hall area. The City also receives revenue from the event to offset expenses, such as security, traffic control, clean up, etc., but not as a full cost recovery.

These types of events factor into the recent contract history and staff's approach to the Fiesta Market Square event and contract.

EVENTS LEADING UP TO AUDIT (February – September, 2003)

On February 28, 2003, Parks and Recreation Assistant Director Ron Smudy, Facility Operations Coordinator Blanche Mendoza and Contract Services Manager Gilbert Hernandez met with the FMSI Board members Jaime Herrejon, Pete Pena and Ruben Cortez along with their Operations Director Patricia Horsford, in order to begin contract negotiations for the 2004 Fiesta del Mercado event. During this meeting, staff mentioned to the Board members that there was information that indicated the Board members compensated themselves for their services during the previous Fiesta del Mercado event. Staff warned the Board members that this type of payment was a violation of the contractual agreement they held with the City of San Antonio. The Board members were further informed that no such action would be tolerated in the upcoming April 2003 Fiesta del Mercado event. On March 10, 2003, correspondence was sent to the Board members attending the February 28th meeting, which outlined the various discussions of the meeting and clearly provided the statement "Fiesta del Mercado (FDM) shall not pay directly any member or Market Square tenant for participating in the production of this event".

Subsequently, the Ethics Review Board convened on April 14, 2003 to consider a complaint filed against Market Square Commissioner Gregory Pena by Farmer's Market tenants Boone Brinson and Thelma Gonzalez. The complaint focused on the appointment of Gregory Pena to the Market Square Commission by Councilman Bobby Perez. The complaint alleged that Gregory Pena was not eligible for appointment as he had a substantial interest in a business entity in Market Square at the time of appointment.

In the course of the testimony to this complaint, the Ethics Review Panel was presented with evidence on two matters that merit discussion. First, it was clear from the evidence that Gregory Pena was not eligible for appointment to the Market Square Commission. City Ordinance 84164 allows only one Commissioner to hold a substantial interest in a business entity in Market Square. Commissioner Ruben Cortez, who owns interest in multiple business establishments at Market Square, occupied this position. Secondly, Gregory Pena provided sworn testimony that he and other members of the FMSI Board received compensation for work involving the Fiesta del Mercado event.

The Ethics Review Panel then recommended that the City review Ordinance No. 84164 and take appropriate steps to ensure that the composition of the Market Square Commission was in compliance with the ordinance and that the City examine the license

AUDIT OF FIESTA MARKET SQUARE, INC. LICENSE AGREEMENT
APRIL 1999 THROUGH APRIL 2003
City Responses to the Audit Report Dated November 6, 2003

agreement with FMSI as testimony indicated that their Board members had acted in violation of the agreement.

Subsequent to the recommendations on April 28, 2003, Assistant City Attorney Helen Valkavich sent hard copies of the opinion and a cover memo to each City Council Office. Mr. Pena was not asked by the City Council to step down from his position on the Market Square Commission and continued to serve for the duration of his term, which ended August 2003.

On May 8, 2003, Malcolm Matthews, Parks and Recreation Director made a presentation to the City Council Governance Committee that requested their direction in determining whether staff should continue contract negotiations with FMSI for future Fiesta events. The Committee directed staff to stop contract negotiations with FMSI and on May 15th, the City Auditor was instructed to audit the organization's Fiesta del Mercado activities. During the course of the audit, the Governance Committee was provided information which led them to direct staff on October 9th to not enter into an agreement for the 2004 Fiesta event but instead to provide an alternate event operator for one year and develop an RFP process for upcoming Fiesta events at Market Square. (That process has since resulted in a contract with the San Antonio Parks Foundation to operate the 2004 event at Market Square.)

AUDIT OF FIESTA MARKET SQUARE, INC. LICENSE AGREEMENT
APRIL 1999 THROUGH APRIL 2003
City Responses to the Audit Report Dated November 6, 2003

City's Responses To Audit Issues, Findings, And Recommendations

City of San Antonio Issues – Internal Review Department

1. Reference report excerpt page 1:

The agreement called for FMSI to hire a CPA “to plan and approve the financial operations” of the event. FMSI hired a CPA throughout the term of the agreement. The agreement also called for the Office of Internal Review to “also review the accounting system of Fiesta del Mercado.” There is no written documentation in the Office of Internal Review files or the Parks and Recreation Department that shows this was performed.

City of San Antonio Issues – Parks And Recreation Department

2. Reference report excerpt page 1:

Mr. Moreno may have worked on a fulltime basis immediately preceding the event and during the event, but not on a year round basis. This was done in accordance with his essential job functions as delineated in the Special Activities Coordinator Job Class Specification under Department-Specific Job Functions for the Parks and Recreation *Department, and his Task Statements/Performance Expectations and Standards and Employee Performance and Development Plan (EPDP).* (See Attachment A.)

3. Reference report excerpt page 1:

When Mr. Moreno became the Special Activities Coordinator in 1985, his duties included working with the two tenant associations (Market Square Association and El Mercado Tenants Association), who had entered into an agreement with the City in 1983, to produce this event. His responsibilities were to contract and schedule all entertainment, develop logistics that included booth placement, beverage placement, non-food vendor placement, and parking. He would develop and coordinate the logistics and present them to the tenant associations. In addition, other Market Square staff, including administrative, skills and trades, and custodial personnel, were used to directly support this event. This arrangement continued through 1994.

In 1994, the three tenant associations formed “Los Tres Mercados” and entered into an agreement with the City to host Fiesta del Mercado through 1998. This agreement did not specifically address the role of the Special Activities Coordinator. However, Mr. Moreno continued to provide support in the form of attending all Board meetings, developing the food booth plan, providing guidance in corporate sponsorships, and logistical and administrative support for the event, as per his supervisor’s direction. Additionally, Section 18 of the agreement did state that the “Parks and Recreation Department, Market Square Division, will have final approval on placement of all food and beverage stands, as well as any other space to be designated. The Department’s administrative staff will schedule a meeting with food vendors to explain all Fire, Health and Department regulations”(See Attachment B). This language is in accordance with Mr. Moreno’s role in booth placement. The agreement did reduce City staff’s role in that the three tenant associations took on greater responsibilities for producing the event, such as hiring and scheduling the entertainment and cash handling.

AUDIT OF FIESTA MARKET SQUARE, INC. LICENSE AGREEMENT
APRIL 1999 THROUGH APRIL 2003
City Responses to the Audit Report Dated November 6, 2003

In 1999, a five-year license agreement was entered into with FMSI, a non-profit corporation made up of three members from each of the three tenant associations. This agreement continued to reduce City staff's role by eliminating their participation in field support of the event. Again, Mr. Moreno's role was not addressed in the agreement and he continued to provide direct support to the nine-member Board in planning, coordinating and staging the Fiesta event, under his supervisor's direction and in accordance with his job description.

In April 2001, Ms. Blanche Mendoza was hired as the Facilities Operations Coordinator at Market Square and she became Mr. Moreno's supervisor. While observing the 2001 Fiesta event, and after reviewing the license agreement, she implemented changes to administrative, maintenance and special event staff's participation in the 2002 Fiesta event. Specifically, she directed Mr. Moreno to continue to attend Board meetings, but to suspend the practice of taking their minutes, cease participation in the food booth drawing, and not participate in securing corporate sponsorships.

4. Reference report excerpt page 1 and 2:

This letter [dated March 3, 2000 from the FMSI President] was written in response to correspondence by former Market Square Superintendent Robert Tagle dated March 1, 2000 (See Attachment C) in which Mr. Tagle questioned the Board's actions in notifying Mr. Moreno that he should not be handling meeting notices. Mr. Tagle further questioned the Board on their actions by stating, "until the Fiesta Market Square, Inc. Board resolves its internal matters, our staff will not participate in any planning sessions." This obviously indicates Mr. Tagle's understanding of the role Mr. Moreno was to play in support of the nine-member Board and the Fiesta event in general. Again, Mr. Moreno was operating in the capacity he was directed by attending Board meetings, taking minutes, and generally providing support to the Board in his capacity as the Special Activities Coordinator. Furthermore, the March 3, 2000 letter from the FMSI President in response to Mr. Tagle's letter clearly indicates their desire to continue to receive the support of the Special Activities Coordinator.

5. Reference report excerpt page 2:

We do not agree that Mr. Moreno "had firsthand knowledge, ample opportunity, and a public duty as one of the official representatives of the Parks Department", but he was one of many with a role in this contract's compliance. He did report the suspected payment of Board members to his immediate supervisors, the Market Square Superintendent from 1999 – 2001, and the Facilities Operations Coordinator from 2001 – 2003. Again, we emphasize that this employee's primary job was to facilitate and coordinate all special events, as per his task statements (See Attachment A).

6. Reference report excerpt page 2:

This employee [Mr. Moreno] acted appropriately in bringing this matter to his supervisor's attention. His supervisor directed him not to accept any payment. He reported back to the Board that he could not accept the money and instead recommended that they utilize the \$2,000 to hire a firm to design a Visitor's Center for Market Square. Attachment D is an invoice for \$2,000 dated October 2, 2001 from Jim Smith Design Consultant for the design of the Visitor's Center.

AUDIT OF FIESTA MARKET SQUARE, INC. LICENSE AGREEMENT
APRIL 1999 THROUGH APRIL 2003
City Responses to the Audit Report Dated November 6, 2003

7. Reference report excerpt page 2:

Employee [Mr. Moreno] was instructed to work with all special events to ensure that they were carried out successfully, as per his job tasks. In reference to the Fiesta del Mercado event, the Special Activities Coordinator received specific direction from his supervisors to develop a working relationship with the nine-member Board and assist them with planning and conducting the event. However in 2002, his new supervisor, Blanche Mendoza instructed him to reduce his involvement with the nine- member Board as specified in the email noted as Attachment E.

8. Reference report excerpt page 3:

During the Facilities Operations Coordinator's previous employment with the YMCA, she participated in "Fiesta del Mercado". Her participation as a YMCA employee in entertainment and margarita concession management prior to her employment with the City in April 2001 is irrelevant to her current situation as a City employee. Her knowledge about "Fiesta del Mercado" and other special events and operations at Market Square were an asset in her seeking employment with the City for this position.

9. Reference report excerpt page 3:

The notes we have reviewed were the appropriate action for this individual [Ms. Mendoza] to take in informing management of her concerns, such as that referenced in Attachment E.

Ms. Mendoza became the Facilities Operations Coordinator on April 23, 2001 during that year's Fiesta del Mercado. After observing the 2001 event, and reviewing the license agreement, she met with the FMSI Board and outlined the following contractual obligations/policy changes that would take effect during the 2002 event:

- City staff would no longer be directly involved with this event.
- Electrical work under Gateway Plaza would be outsourced.
- The plan and layout for booths would be approved by Ms. Mendoza prior to the event.
- City staff would attend meetings as ex-officio only, not as event staff.

These changes were carried out during the 2002 and 2003 events (See Attachment E).

Other changes effected by Ms. Mendoza included implementing a new policy that prohibited staff from participating in the food booth drawing process, signing contracts on behalf of FMSI, and cash handling. This change took place during the 2002 and 2003 events.

In October 2002, Ron Smudy became Ms. Mendoza's immediate supervisor. Since that time, she reported numerous irregularities to him, i.e., Board members hosting additional weekend events without rental agreements, the attempted expansion of the Fiesta del Mercado site, and suspected payments to Board members during the 2003 event. Parks management addressed these issues with the nine-member Board on several occasions. With reference to the weekend events, Mr. Smudy, Ms. Mendoza, and Mr. Moreno met with Jaime Herrejon, FMSI President, and Patricia Horsford, Operations Director for FMSI, on February 7, 2003 regarding the need for them to enter into short-term rental agreements with the City for these events. (See Attachment F.)

AUDIT OF FIESTA MARKET SQUARE, INC. LICENSE AGREEMENT
APRIL 1999 THROUGH APRIL 2003
City Responses to the Audit Report Dated November 6, 2003

10. Reference report excerpt page 3:

Her [Ms. Mendoza] previous employment did not affect her objectivity in her current capacity as Facilities Operations Coordinator for the City. Upon review of Appendices Q-29a, Q-29b, Q-29c, Q-29d, it is apparent that Blanche Mendoza contacted the company "The Margarita Man" and informed them that FMSI was interested in renting machines from them and they should contact them for follow-up. Ms. Mendoza's signature did not appear on any of the invoices sent to FMSI and therefore we see her only as providing information as a resource to FMSI. When the vendor invoiced FMSI, he simply noted "Blanche Mendoza/YMCA" as the contact since that was the capacity within which he knew her from previous business transactions.

11. Reference report excerpt page 3:

We understand that this comment relates to the Texas Alcoholic Beverage Commission's (TABC) requirement for proof of rental and property owner permission relating to the sale of alcohol.) The employee [Ms. Mendoza] followed past practice established by her predecessors dating back to 1994 between the Parks and Recreation Department and TABC. This procedure was to develop a short-term rental agreement on an annual basis and to provide a letter of authority from the Parks and Recreation Department for alcohol to be served and to utilize these documents in obtaining a temporary beer and wine license. We acknowledge the fact that the short-term rental agreements were not necessary in order to fulfill the TABC requirement. The license agreement contained all the information necessary and should have been used for this purpose. Attachment G includes copies of short-term rental agreements dating back to 1994.

12. Reference report excerpt page 4:

The license agreement served as the operating and/or monitoring guidelines followed by staff. Additionally, there were written operating and procedural guidelines developed by staff for this event. Attachment B includes rules, regulations, and operating guidelines that were provided to FMSI for the 2002 and 2003 events. In addition, a Fiesta Operating Rules and Guidelines brochure is developed annually by City staff and provided to FMSI along with other Fiesta operators/contractors (See Attachment H).

There were two written notices dated June 3, 2003 and June 10, 2003 demanding overdue payment for the 2003 event sent to FMSI (See Attachment I).

13. Reference report excerpt page 4:

After reviewing the documents provided, we feel City staff operated in the spirit of cooperation in supporting this event, as per management directives and past practices. As mentioned earlier, the role of Market Square staff has included assisting tenants as part of a business incubator arrangement, support to a non-profit that the City insisted be created, and promotion of Market Square through events. Again, we should have been more diligent in monitoring contract terms and acknowledge this deficiency.

14. Reference report excerpt page 5:

There were documented deficiencies found in this review, such as employees participating in the food booth drawing process, signing agreements for Fiesta del Mercado, cash handling for daily operations during the event, and hands-on involvement of daily operation of the event during the first years of the agreement. However, we have provided additional documentation to support the

AUDIT OF FIESTA MARKET SQUARE, INC. LICENSE AGREEMENT
APRIL 1999 THROUGH APRIL 2003
City Responses to the Audit Report Dated November 6, 2003

fact that the 2002 and 2003 events were managed in a fashion that corrected many of these deficiencies. Attachment J outlines additional documentation to support management changes whereby City staff was no longer utilized to provide electrical support to the event, as had been past practice. This also provides documentation of City staff's attempt to control the footprint of the event as specified in the license agreement.

15. Reference report excerpt page 5:

While there was no previous notification of default to FMSI prior to February 2003, when Mr. Smudy was made aware that past payments to Board members may have occurred during previous years of the license agreement (before the 2003 event), a meeting was scheduled with the FMSI Board. On February 28, 2003, Mr. Smudy informed members of FMSI that the City considered this a default situation and would not tolerate any payments to Board members during the upcoming 2003 event (See Attachment K, letter to FMSI Board from Gilbert Hernandez dated March 10, 2003). Additionally, Ms. Mendoza sent a letter to Mr. Herrejon, President of FMSI on June 3, 2003 requesting payment to the City of \$50,000 for the 2003 event. No formal response was received; therefore a notice of default was mailed to Mr. Herrejon on June 10, 2003 (See Attachment I).

16. Reference report excerpt page 6 through 7:

In July 2001, the City Council approved an ordinance creating the Contract Services Division (CSD) in the Department of Asset Management, whose goal would be to develop and improve contracting technological and process infrastructure as outlined in the recommendations suggested in a Performance Review conducted earlier that year. Specifically, CSD would develop contracting policy and process, provide contracting training to staff, develop technological tools to promote contracting and contract administration, and serve as the City's "contracting ombudsman."

During the first phase of this initiative, the primary focus was on the "front-end" of the contracting process – those activities leading up to and including the execution of a contract. This was accomplished by consolidating contracting information into a centralized database, developing, documenting, and implementing standardized contracting procedures, and training staff on a variety of topics including contract law, contract negotiation, and RFP development. During fiscal years 2002 and 2003, over 100 City staff were certified as Contracting Officers after attending core contracting courses provided by CSD.

During the second phase of this initiative, to be implemented this year, there will be a concentration on the "back-end" of the contracting process – those activities that ensure that contract deliverables are provided in accordance with contractual terms and conditions. This will involve training staff on the critical elements of contract administration, and building an organizational infrastructure (with duties similar to the operations of the former Office of Internal Review) that will possess the skills necessary to ensure that proper contract administration is being performed. This "compliance" function will help make certain that a specific contracting initiative will be appropriately carried out by all vendors, contractors, consultants, etc., as well as all City departments involved in the initiative.

AUDIT OF FIESTA MARKET SQUARE, INC. LICENSE AGREEMENT
APRIL 1999 THROUGH APRIL 2003
City Responses to the Audit Report Dated November 6, 2003

In the Parks and Recreation Department, contract preparation and monitoring staff will continue to be updated on the aforementioned training, as well as contract processes that will be improved with the City's Enterprise Resource Management initiative that is underway. The current and future contract tracking systems will continue to be improved to address staff roles in monitoring. This will include reorganizational issues in Parks and Recreation to address improved compliance of over 400 contracts. Those actions include the following:

1. Creation of separate contract functions: Contract preparation, contract monitoring, and facility operations will be in separate divisions to improve checks and balances and ensure staff role is compliant with related contracts.
2. Reorganize staffing to improve efficiency and better define job duties in order to avoid staff assistance beyond contract allowance and to assist understaffed facilities, i.e. La Villita and Spanish Governors Palace. The Special Activities Coordinator at Market Square has been reassigned to better use personnel across the board at all of these special facilities and to assist with City events. The Special Facilities division will remain, which consists of Market Square, Spanish Governors Palace, La Villita and Tower of the Americas.

Office of Internal Review Role

The City's contract preparation process over the past several years has relied upon the Office of Internal Review to prepare cash and revenue procedures and provide spot check and performance audit functions for various departmental contracts. In several contracts, the Office of Internal Review has been identified in contract wording to perform particular functions. Internal Review, over the years, was also used to perform duties for departments not specifically identified in contracts, such as spot checks in the field. With the transfer of the City's Audit function to City Council and with the elimination of Internal Review as a City department, the contract monitoring role they provided has been lost. Individual departments do not have staff trained as Certified Public Accountants (CPA's) or auditors within their organizations, as did Internal Review.

It is not the best management of City resources to provide each department with CPA's, however, an experienced, knowledgeable corps of accounting and audit staff will be needed within the City structure to provide contract monitoring assistance to departments. This is of utmost importance since many of the City's active contracts still require Internal Review responsibility.

AUDIT OF FIESTA MARKET SQUARE, INC. LICENSE AGREEMENT
APRIL 1999 THROUGH APRIL 2003
City Responses to the Audit Report Dated November 6, 2003

Responses to documents provided to us by Ms. Major.

1. Three checks written by FMSI to Jesse Moreno – These were reimbursements for out-of-pocket expenses associated with the event, papel picado (decorative fiesta streamers) and lamination for event credentials (See Item 1).
2. Invoice from KLRN to Jesse Moreno – KLRN contacted Mr. Moreno with a proposal for advertising FMSI during their 2002 general auction. He passed this proposal on to FMSI for their consideration. Upon approval by the FMSI Board, KLRN provided the advertisement and invoiced FMSI, Attention: Jesse Moreno (See Item 2).
3. General correspondence dealing with Fiesta del Mercado operational issues between City staff and FMSI (See Item 3).
4. FMSI bank deposit reconciliation/documents dealing with weekend rentals - Staff provided short-term rental agreements, as per policy, which document that these events were authorized outside of the license agreement (See Item 4).
5. Investigative report by the Office of Municipal Integrity regarding suspected employee theft, and financial audit of Los Tres Mercados 1996 Fiesta event conducted by the Office of Internal Review (See Item 5).
6. Flyer distributed by City staff to all interested food booth vendors on the day of the drawing regarding rules, regulations, and processes (See Item 6).
7. Fiesta food booth contracts for Fiesta del Mercado 2000 – City staff assisted FMSI in the execution of these food vendor contracts in 2000 (See Item 7). Upon Ms. Mendoza's employment in 2001, she affected a new policy that prohibited staff from participating in the food booth drawing process. This change took place in 2002 and 2003.

01-21-04 (3:00 PM)